

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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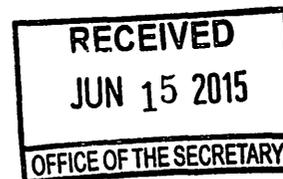
ADMINISTRATIVE PROCEEDING
File No. 3-16354

In the Matter of

**David B. Havanich, Jr.,
Carmine A. DellaSala,
Matthew D. Welch, Richard
Hampton Scurlock, III,
Retirement Tax Advisory
Group, Jose F. Carrio, Dennis
K. Karasik, Carrio, Karasik
& Associates, LLP, and
Michael J. Salovay,**

Respondents.

**DIVISION OF ENFORCEMENT'S
PREHEARING BRIEF WITH RESPECT
TO RESPONDENT MICHAEL J.
SALOVAY**



I. Introduction

The Division of Enforcement ("Division") submits the following Prehearing Brief With Respect to Respondent Michael J. Salovay. The Division incorporates and adopts the arguments set forth in its Prehearing Brief With Respect to Respondents Richard Hampton Scurlock, III and RTAG, Inc. ("Scurlock Prehearing Brief").

II. Statement of Facts

The Commission anticipates proving that in approximately 2009, Salovay, a resident of Pittsburgh, Pennsylvania, saw Diversified Energy Group, Inc.'s advertisement in a professional journal. At the time, Salovay was not registered as or with a broker dealer. Salovay did have a state insurance license, and the people he introduced to Diversified were either his clients, or people who heard about Diversified from his clients.

Salovay's due diligence on Diversified included an in-person visit, and he received Diversified's offering memorandum and brochure. Salovay ultimately entered into a finders agreement with Diversified substantially identical to the agreement entered into by Scurlock. As part of the process of referring his insurance clients to Diversified, Salovay took steps such as providing them with Diversified's offering materials, explaining the Diversified investment, describing the industry and the bonds, and discussing the potential risks.

Between 2009 and 2012, Salovay received approximately \$100,000 in commissions from Diversified. Assuming a commission rate of 10%, and totally excluding renewals, Salovay was responsible for bringing more than \$900,000 of investor money into Diversified.

The only additional facts the Division anticipates proving relate to Salovay's industry history. Salovay was a broker registered with various entities between 1999 and 2007. In 2006, two customers (apparently husband and wife) filed a complaint against Salovay and his then employer claiming that Salovay failed to disclose certain penalties associated with early withdrawals from a variable annuity. In the arbitration proceeding, Salovay and his employer were found jointly and severally liable and ordered to pay compensatory damages of \$38,444, punitive damages of \$10,000, and attorney's fees of \$20,000.

In October 2008, FINRA brought an action against Salovay, finding that with respect to his U4 form, Salovay willfully failed to disclose material facts, made false statements, and failed to update the form in connection with an unpaid judgment and a Chapter 7 bankruptcy petition. Salovay was fined \$5,000 and suspended for nine months.

III. Salovay Violated Exchange Act Section 15(a)(1) By Acting as an Unregistered Broker

Under the law—discussed in detail in the Scurlock Prehearing Brief—Salovay acted as a broker at a time he was not registered as such, in violation of Section 15(a) of the Securities

Exchange Act of 1934. He received a significant amount of transaction based compensation over a 30-month period, did due diligence on Diversified, and, at least with respect to some of his clients, provided them with documentation and discussed with them the bonds and the risks thereof. Any reliance by Salovay on *SEC v. Kramer*, 778 F. Supp. 2d 1320 (M.D. Fla. 2011), would fail. In addition to *Kramer's* inconsistency with Commission precedent, it is distinguishable for the same reasons as it is with respect to respondent Scurlock: unlike Kramer, Salovay had a direct contractual relationship with the issuer, from whom he received transaction based compensation, and the investors for whom he received commissions were not friends and family but were either his insurance clients or people his insurance clients brought to the table themselves. Thus, based on these facts, even if there were a “finder” exception to the registration requirement, Salovay would not satisfy it.

IV. Remedies

We set forth the law on the issues relating to remedies in the Scurlock Prehearing Brief. With respect to disgorgement, (a) the amount of commissions Salovay received is a reasonable estimate of his improper gains, and (b) there are no extraordinary circumstances that would make an award of prejudgment interest inappropriate.

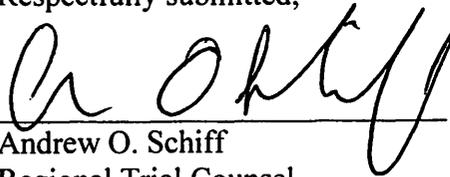
A civil penalty is also appropriate. The conduct here is relatively recent, lasted a number of years, and resulted in approximately \$900,000 being invested in Diversified bonds. Purchasers of the bonds suffered losses on their investment. Salovay was formerly a registered representative and therefore was aware of the registration requirement. While we expect Salovay to submit evidence relating to his ability to pay, this is a factor which “may be considered, but it is only one factor. Considering it is also discretionary” *Johnny Clifton*, AP File No. 3-

14266, 2013 WL 3487076, *16 n.116 (July 12, 2013) (Commission Opinion). Accordingly, a civil penalty is appropriate, in an amount (and based on a tier) to be determined after the hearing.

These same factors support a cease-and-desist order (which, based on Salovay's answer, he does not oppose) and industry and penny-stock bars. In addition to the factors described above with respect to civil penalties, Salovay continues to be in the insurance business—the same position he had at the time of his offense—and is therefore situated to repeat his conduct if given the opportunity. Moreover, Salovay has a prior disciplinary history, and acted as an unregistered broker after having been suspended. Therefore, a cease-and-desist order and industry and penny stock bars should be imposed.

June 12, 2015

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served by U.S. Mail, on this 12th day of June 2015, on the following persons entitled to notice:

The Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

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Pittsburgh, PA [REDACTED]



Andrew Schiff, Esq.



Office Memorandum
SECURITIES AND EXCHANGE COMMISSION

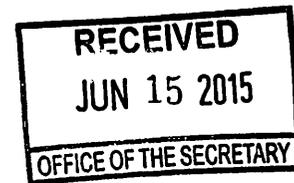
Miami Regional Office

DATE: June 12, 2015

TO: OFFICE OF THE SECRETARY

FROM: Andrew Schiff, Esq.
By: Jessica Benitez-Perellada, Paralegal

RE: **In the Matter of the Havanich, et al.**
Adm. Proceeding No. 3-16354



Enclosed please find the original and three copies of the Division of Enforcement's Prehearing Brief with Respect to Respondent Michael J. Salovay.

Thank you.